IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ROBERT B. PHELPS	)	
	)	**ART UNIT: 3629**
SERIAL NO.: 10/636,125	)	
	)	
FILED: August 7, 2003	)	
	)	**EXAMINER: FRENEL, VANEL**
METHOD OF ENHANCING VALUE OF PENSION PLAN ASSETS	)	
	)	
CONFIRMATION NO.: 1568	)	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

BRIEF ON APPEAL

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Real Party in Interest

The real party in interest for this appeal is Indianola Development Company, L.L.C., a Louisiana corporation having its principal place of business at 111 Founders Drive, Suite 500, Baton Rouge, LA 70810.

Related Appeals and Interferences

None.

Status of Claims

Claims 1-21 are in the case, and all have been rejected. All of these claims are being appealed. All of these claims are reproduced in the Claims Appendix attached hereto.

Status of Amendments

No amendments were filed subsequent to the final rejection in this case.

Summary of Claimed Subject Matter

This invention provides a method for enhancing the value of pension plan assets by creating predictable and beneficial results to the acquiring pension plan in a unique way. Specification Page 2, paragraph 0012. The inventor has recognized that pension systems continue to suffer significant fluctuations in value and in fact are increasingly determined to be under-funded during periods of declining market values and stable or rising benefit liabilities despite the evolution of financial products and that there exists a significant need for a way to remove some measure of volatility in the actuarially determined status of pension systems by increasing the value of plan assets. Specification Page 1, paragraph 0006. The present invention satisfies this need in a unique and highly facile way.

The present invention, in one embodiment, satisfies this need by providing a method which comprises investing at least a portion of one or more assets of a pension system so as to acquire an interest in one or more current, in-force insurance contracts from one or more owners of the one or more current, in-force insurance contracts, wherein each of the one or more insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan.

The insurance contract(s) employed in this invention will always have the characteristic of providing to a beneficiary (1) a stream of payments, (2) a death benefit, or (3) both 1 and 2, with the payment obligations to the beneficiary being either terminated or triggered by the death of an insured. Specification Page 1, paragraph 0007. The remaining life expectancy of the insured or the remaining life expectancy of each of the insureds, when determined at least immediately after the acquisition, is such that (i) the total value of the pension system assets, inclusive of the interest so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension system assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension system invested, the respective total values of (i) and (ii) being determined at the same point in time and in

accordance with the same actuarially sound valuation method. Specification Page 2, paragraph 0008. Another embodiment of this invention provides a pension system comprised of an investment portfolio, wherein the investment portfolio is comprised of an interest in one or more current, in-force life insurance settlement contracts, wherein each of the one or more life insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan.

Yet another embodiment of the present invention provides an investment product marketable to a pension system having pension system assets to invest. The investment product comprises a transferable interest in a pool of current, in-force life insurance contracts, wherein each of the one or more life insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension system.

Grounds of Rejection To Be Reviewed on Appeal

Claims 1-21 stand rejected under 35 U.S.C.§101 as unpatentable subject matter and under 35 U.S.C.§103(a) as obvious over Halley et al (U.S. 4,969,094) in view of Banks (2003/0018498).

Argument

The subject matter in question is patentable from a plain reading of the statute and in light of the In re Lundgren decision of this Board. Also, the references cited in support of the obviousness rejections fail to establish a *prima facie* case of obviousness and should be reversed.

I. The presently claimed subject matter is patentable under 35 U.S.C. §101.

35 U.S.C. §101 provides as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claims rejected on appeal in the present case are directed to a process and clearly represents patentable subject matter.

The United States Supreme Court has recognized three judicially recognized exceptions to section 101, to date. The Supreme Court has excluded from patent protection only the laws of nature, physical phenomena and abstract ideas. Diamond v. Diehr, 450 U.S. 175, 185 (1981). However, the rejection of claims in the present case under section 101 is not based on any of these exclusions but rests on the premise that the subject matter is not within a "technological art," a separate inquiry which has previously been rejected as a test for statutory subject matter. See Final Office Action, p. 4. In fact, in the Final Office Action the Examiner stated, "the Examiner rejection was not based on the fact that the claimed process is NOT useful, tangible, or concrete, nor that claimed process lacks a practical application *per se*" (Final Office Action, p. 4). Rather, while conceding that the claimed invention met the other requirements of section 101, the Examiner solely relied on the incorrectly perceived "technological art" requirement in his rejection under section 101. (Final Office Action, p. 4).

This Board has recently and squarely rejected this "technological arts" requirement. In its Ex parte Lundgren decision issued in 2005, th Board determined that "there is currently no judicially recognized separate 'technological arts' test to determine patent eligible subject matter under § 101," and it declined to create one. Ex parte Lundgren, 76 USPQ2d 1385, 1388 (BPAI

2005) (*precedential*).

Also, after the Lundgren decision, the Patent and Trademark Office issued its "Interim Guidelines for Examination of Patent Applications" which states that the "not in the technological arts" test is "**not** to be applied by examiners in determining whether the claimed invention is patent eligible subject matter." Interim Guidelines for Examination of Patent Applications at 42. Emphatically, the Guidelines state that, "United States patent law does not support the application of a 'technical aspect' or 'technological arts' requirement." Interim Guidelines for Examination of Patent Applications at 42.

Yet, in the face of these developments, in the Examiner's final rejection of Claims 1-21 , the Examiner relies, directly and indirectly, solely on this purported "technical arts" requirement to maintain the rejection of claims pursuant 35 U.S.C.§101. (Final Office Action, pp. 4-5). Because there is clearly no such prerequisite under section 101 to establish statutory subject matter, Appellant respectfully submits that the Examiner has failed to establish a *prima facie* case under section 101, that the present invention is directed to statutory subject matter pursuant to 35 U.S.C.§101, and that the § 101 rejection of Claims 1-21 should be reversed .

II. The Patent Examiner Has Failed to Meet His Burden of Establishing a *Prima Facie* Case of Obviousness under 35 U.S.C.§103(a).

The present invention is not obvious under 35 U.S.C.§103(a) over Halley et al. (U.S. 4,969,094) in view of Banks (2003/0018498). The present combination of cited references fail to establish a *prima facie* case of obviousness, because there is no motive or suggestion to combine these references, because the rejection was constructed from hindsight, and because Halley et al. and Banks clearly teach away from combination with each other.

A. The Patent Examiner has Failed to Even Assert any Motivation or Suggestion to Combine the References in Question.

When, as in most cases, a combination of references is relied upon for a 103 rejection, there must be some suggestion or motivation to combine the references. Moreover, the

Examiner is required to point to something in the reference(s) that provides a motivation or suggestion to combine the references. The Federal Circuit has stated in *In re Fritch* that

> "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992) (quoting *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125 (Fed. Cir. 1984)).

No such motivation or suggestion has been provided in the Examiner's actions below. This itself is grounds for reversing the § 103 rejections for failure to meet the burden of establishing a *prima facie* case of obviousness.

B. The Cited References Teach Away From Their Combination.

Additionally, Halley and Banks actually teach away from their combination. In this connection, it is pointed out that references must be considered for what they teach as a whole. As the Federal Circuit has explained:

> It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. . . . This is improper hindsight analysis. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 448, 230 U.S.P.Q. 416 (Fed. Cir. 1986).

In particular, Halley and Banks are related to two clearly different types of benefit plans. Halley is a self-implementing pension benefits system for *employee-beneficiaries*, while Banks is a survivor benefit plan for *survivors of employee-beneficiaries*, both of which are different from the present invention. Additionally, the contradictory teachings of Halley and Banks regarding the funding of the respective plans involved have been entirely disregarded by the Examiner. Halley teaches a self-implementing pension system without the need of employer participation that uses life insurance contracts (with plan beneficiaries as the insureds) as collateral for reverse annuities, while Banks teaches a self-funded employee survivor benefits plan (for *survivors* of the employee rather than the employee himself) that includes one investment vehicle, such as a

trust fund, that holds the employer/employee contributions to the plan, manages the investments of the plan and may also purchase and manage insurance contracts on certain high-risk and other employees to limit the liability and tax exposure of the plan. Thus, Halley and Banks teach away from combination with each other because these features are incompatible. The foregoing is yet another reason the rejections of the present claims under section 103(a) must be reversed.

C. The Combined Teachings of These References Fail to Disclose the Present Invention.

Even if one assumes, *arguendo*, that the asserted combination is somehow proper, their combined teachings still fail to disclose or teach the invention as presently claimed.

1. The Patent Examiner Has Failed to Establish a **Prima Facie** ***Case of Obviousness for Claims 1-8.***

Regarding Claim 1, the Examiner relies upon Halley in view of Banks for its rejection. Specifically, in the Office Action, Halley is relied upon for the proposition that it discloses a method which comprises the step of: investing at least a portion of one or more assets of a pension plan so as to acquire an interest in one or more current, in-force insurance contracts from one or more owners of the one or more current, in-force insurance contracts, wherein each one or more insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of the insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan, the remaining life expectancy of the insured or the remaining life expectancy of each of the insureds, when determined at least immediately after the acquisition, being such that (i) the total value of the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested, the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method.

In the Office Action, the Examiner properly noted that Halley does not explicitly disclose the respective total values of (i) and (ii) being determined at the same point in time and in accordance to the same actuarially sound valuation method. (Office Action, Page 4, paragraph

5(A)). However, the Examiner stated that this feature is known in the art, citing Banks, but the Examiner is mistaken. The Examiner asserted that Banks suggests the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method. However, the teachings of Banks are misstated in the Office Action and Final Action, and when Banks is read correctly, the combination of teachings in Halley and Banks fail to disclose or teach the presently claimed invention.

As noted above, the Examiner is correct that Halley does not teach the respective total values of (i) the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, and (ii) the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested, are determined at the same point in time and in accordance with the same actuarially sound valuation method. However, despite the Examiner's assertion to the contrary, Banks does not teach that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method.

The words "at the same time" are written in the Banks application, but the items which are "at the same time," as used in Banks, are not relevant to the determination of the respective total values of (i) the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, and (ii) the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested. In Banks, the two things that occur "at the same time" are designing an optimal plan design to meet the employer's specific objectives and *at the same time* ensuring that the plan is funded as intended. (Banks, page 3, Paragraph 0024). In fact, nowhere does Banks teach that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method. Thus, Banks cannot make up for the deficiencies in the disclosure of Halley.

As discussed above, Claim 1 of the present invention and each claim depending therefrom, namely Claims 2-8, are not obvious over Halley in view of Banks, and the § 103 rejection of Claims 1-8 should be reversed .

Moreover, the Examiner has failed to provide the requisite motivation or suggestion for this combination of Halley and Banks, and in fact, the combination is merely the product of impermissible hindsight reasoning. Thus, the § 103 rejection of Claim 1 and each claim depending therefrom, namely Claims 2-8, should be reversed .

Even if one assumes, *arguendo*, that Banks somehow made up for Halley's deficiencies in teaching that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method, which is denied by Appellant, Halley also fails to teach that "the insured is not a beneficiary of the pension plan," as is claimed in Claim 1 of the present invention, despite the Examiner's assertion to the contrary. (Office Action, p. 4, paragraph 5(A)). One of the unique features of the present invention is that it involves acquisition, through secondary markets or other sources, of one or more current, in-force insurance contracts which insure third parties who are not beneficiaries of the subject pension plan. However, in Halley, the employee is both the insured and a pension plan beneficiary; while, in contrast, in the present invention, the insured is not a pension plan beneficiary.

Therefore, as discussed above, no *prima facie* case for obviousness under section 103 has been established for Claim 1 nor for each claim depending therefrom, namely Claims 2-8. The teachings of Halley do not make Claims 1-8 of the present invention obvious, and the § 103 rejections of Claim 1 and each claim depending therefrom, namely Claims 2-8, are improper and should be reversed .

Moreover, regarding Claims 3 and 4, the Examiner relies upon Banks for their rejections. In support of their rejections, the Examiner states that Banks discloses a method wherein the remaining life expectancy of the insured, or at least one of the insureds, under the one or more life insurance contracts is no more than 20 or 15 years, respectively. (Office Action, p. 5, paragraphs 5(C) & 5(D) both *citing* Banks, Page 6, Paragraph 0047). Banks teaches how to calculate employer and/or employee contribution levels needed to meet the predetermined funding level desired by the employer. (Banks, Page 6, Paragraph 0047). The life expectancies considered in this calculation in Banks (the expected mortality of each employee and the life expectancy of the designated survivors) are not predetermined to be less than 20 or 15 years as is

claimed in the present invention. There is no restriction on the life expectancy of the insureds.

Rather, in Banks, the life expectancies are used to determine the survivor income benefit that is expected after death and the related necessary employer and/or employee contributions in order to assure proper funding. There is no maximum or minimum life expectancies requirement taught in Banks, and the employees' and beneficiaries' variable life expectancies are not subject to no cap limits. (Banks, Page 6, Paragraph 0047). The 20 years disclosed in Banks relates to benefit payment period for beneficiaries, not to life expectancies. The 20 years is an example of a specified number of years for which benefits could be paid for designated survivors other than the employee's spouse (Banks, Page 6, Paragraph 0047), not a cap on the life expectancy of the insured as in the invention claimed in these claims. Therefore, as discussed above, no *prima facie* case for obviousness under section 103 has been established for Claims 3-4.

Further, the arguments regarding Claims 3-4 equally apply to the Examiner's rejections of Claims 7-8, which also disclose the remaining life expectancy of the insured, or at least one of the insured, under the one or more life insurance contracts being no more than 20 or 15 years, respectively. Again, the Examiner's reliance upon Banks for the rejection of Claims 7-8 is also misplaced. The teachings of Banks do not make Claims 3, 4, 7 or 8 of the present invention obvious, and the section 103 rejections of Claims 3 and 4 should be reversed .

Moreover, regarding Claim 5, again, the Examiner erroneously relies on the language "at the same time" in Banks in the rejection of this claim. As discussed in greater detail *supra* in relation to the rejection of Claim 1, the two things that occur "at the same time" in Banks are designing an optimal plan design to meet the employer's specific objectives and ensuring that the plan is funded as intended, which differs from the invention claimed, in that Banks does not teach that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method.

Additionally, regarding Claim 5, the Examiner submits that "[a] survivor benefit plan is an employee benefit, sponsored by the employer, which provides the employee's designated survivor(s) such as a spouse, children, etc., with a predetermined periodic income stream in the event the employee dies while a participant in the plan. This type of plan is very attractive to employees because it provides a certain income stream to the designated beneficiaries without

the investment problems attendant with a lump-sum payout, thereby a stable income to the beneficiaries over a period of time." (Final Office Action, Pages 5-6, Paragraph (D) *citing* Banks, Page 1, Paragraph 0002). Yet, the claims of the present invention, particularly Claim 5, do not involve the payout of benefits to any beneficiary. In fact, this reference to Banks is completely irrelevant to the Claims of the present invention and does not teach any of the claims of the present invention. Thus, no *prima facie* case for obviousness under section 103 has been established, and the section 103 rejection of Claim 5 should be reversed .

Therefore, as discussed above, no *prima facie* case for obviousness under section 103 has been established for Claim 1 nor for each claim depending therefrom, namely Claims 2-8. The § 103 rejections of Claim 1 and each claim depending therefrom, namely Claims 2-8, are improper and should be reversed .

2. The Patent Examiner Has Failed to Establish a **Prima Facie** *Case of Obviousness for Claims 9-16.*

Regarding Claim 9 and each of the claims depending therefrom, namely Claims 10-16, as discussed in more detail *supra*, Halley fails to teach that "the insured is not a beneficiary of the pension plan," as is claimed in Claim 9 of the present invention, despite the Examiner's inexplicable assertion to the contrary. (Office Action, p. 6, paragraph 5(F)). In Halley, the employee is *always* both the insured and a pension plan beneficiary; while, in the present invention, the insured is *never* a pension beneficiary.

Further with respect to Claim 9, the Examiner correctly found that Halley does not explicitly disclose a pension plan comprised of an investment portfolio, wherein the investment portfolio is comprised of an interest in one or more current, in-force insurance contracts. (Office Action, p. 6, paragraph 5(F)). However, the Examiner incorrectly stated that this feature is known in the art, as evidenced by Banks. (Office Action, p. 7, paragraph 5(H)). Even though Banks does teach an investment portfolio of employer/employee contributions, Claim 9 is clearly distinguishable over Banks. The insurance contracts that Banks teaches as one funding strategy (along with stocks, bonds, etc.) insure employees only. (See Banks, Page 5, Paragraph 0042.) In contrast, the investment portfolios of the present invention contain insurance contracts that do **not** cover beneficiaries of the pension plan. Rather than purchasing an insurance contract with a

pension plan beneficiary as the insured as disclosed in Banks, in the present invention, an insurance contract or contracts is acquired such that the insured is *not* a beneficiary of the pension plan.

Moreover, the Examiner's rejections of Claims 11-12 and Claims 15-16 are not supported by Banks. As discussed in more detail above in relation to the rejections of Claims 3-4, the life expectancies considered in Banks are the expected mortality of each employee and the life expectancy of the designated survivors, and these life expectancies in Banks are not predetermined to be less than 20 or 15 years as is claimed in the present invention. There is no restriction on the life expectancy of the insureds in Banks. Therefore, as discussed above, no *prima facie* case for obviousness under section 103 has been established for Claims 11-12 and 15-16.

Furthermore, the rejection of Claim 13 should be reversed because the Examiner erroneously relies on the language "at the same time" in Banks. As discussed in greater detail *supra* in relation to the rejection of Claim 1, the two things that occur "at the same time" in Banks are designing an optimal plan design to meet the employer's specific objectives and ensuring that the plan is funded as intended, which differs from the invention claimed, in that Banks does not teach that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method. As such, the rejection of Claim 13 is erroneous.

Therefore, as discussed above, no *prima facie* case for obviousness under section 103 has been established for Claim 9 or any of the claims depending therefrom, namely Claims 10-16. Claims 9-16 of the present invention are not obvious over Halley in view of Banks, and the § 103 rejection of Claim 9 as well as the rejection of the claims depending therefrom, namely Claims 10-16, should be reversed .

Furthermore, the Examiner has failed to provide the requisite motivation or suggestion for this combination of Halley and Banks, and in fact, the combination asserted appears to be the product of impermissible hindsight reasoning. Thus, the § 103 rejection of Claim 9 as well as the rejection of the claims depending therefrom, namely Claims 10-16, should be reversed.

3. The Patent Examiner Has Failed to Establish a* Prima Facie *Case of

Obviousness for Claims 17-21.

Regarding Claims 17-21, contrary to the Examiner's contention that Halley and Banks disclose features of these claims, neither reference alone or in combination with the other teaches all of the features of Claim17 or any of the claims depending therefrom, namely Claims 18-21. Despite the Examiner's assertion in the Office Action, Banks does not teach or suggest that the interest in insurance policies be purchased from a pool of current, in-force insurance contracts. (Office Action, Page 7, Paragraph 5(G) *citing* Banks, Page 5, Paragraphs 0042-0044). Paragraphs 0042-0044 of Banks disclose a trust fund of assets that can be used to purchase investments, such as individual insurance contracts with the beneficiaries of the plan being the insureds under these contracts. However, there is no disclosure of a pool of insurance contracts in Banks.

Additionally, the Examiner asserts that Halley suggests "all life insurance premiums for a given subscriber employer are paid substantially, if not totally, by dividend accumulations within the life insurance institution." (Final Office Action, Page 6, Paragraphs (F) & (G) *citing* Halley, Col. 4, lines 53-59.) In Claims 17-21, there are no life insurance premiums to be paid under the plan for a plan beneficiary, as the insurance contracts referenced in the present invention are specifically insuring persons who are *not* beneficiaries of the pension plan. Also, no mention is made in these particular claims to the present invention regarding dividends accumulating under a life insurance policy. Therefore, this reference to Halley is completely irrelevant and does not teach any of the claims of the present invention.

The rejection of Claim 18 should be reversed on the additional ground that the Examiner erroneously relies on the language "at the same time" in Banks. As discussed in greater detail *supra* in relation to the rejection of Claim 1, the two things that occur "at the same time" in Banks are designing an optimal plan design to meet the employer's specific objectives and ensuring that the plan is funded as intended, which differs from the invention claimed, in that Banks does not teach that the total values of (i) and (ii) are determined at the same point in time and in accordance with the same actuarially sound valuation method. As such, the rejection of Claim 18 is erroneous.

Furthermore, the Examiner's rejections of Claims 20-21, as discussed in more detail

above in relation to the rejections of Claims 3-4, are not supported by Banks. The life expectancies considered in Banks are the expected mortality of each employee and the life expectancy of the designated survivors, and these life expectancies in Banks are not predetermined to be less than 20 or 15 years as claimed in the present claims. There is no restriction on the life expectancy of the insureds in Banks. Therefore, no *prima facie* case for obviousness under section 103 has been established for Claims 20-21.

For all the foregoing reasons, Claim 17 and the claims depending therefrom, namely Claims 18-21, are not obvious over Halley in view of Banks, and the § 103 rejection of Claims 17-21 as should be reversed. The references relied upon by the Examiner fail to establish a *prima facie* case of obviousness with respect to the rejected claims.

Additionally, or in the alternative, the Examiner has failed to provide the requisite motivation or suggestion for this combination of Halley and Banks, and in fact, the combination is hindsight reasoning. Thus, the § 103 rejection of Claims 17-21 should be reversed.

In light of the foregoing arguments, it is clear that the § 101 and § 103 rejections of Claims 1 through 21 were erroneous and should be reversed.

Relief Sought

Reversal of all of the rejections in this case, and a finding that the present claims are allowable over the cited references are requested.

Respectfully submitted,

/Brenda C. Harvey/
Brenda C. Harvey
Reg. No. 50,405
Attorney of Record
Sieberth & Patty, LLC
4703 Bluebonnet Blvd.
Baton Rouge, LA 70809
Telephone: 225-291-4600
Facsimile: 225-291-4606

Claims Appendix

1. A method which comprises the step of: investing at least a portion of one or more assets of a pension plan so as to acquire an interest in one or more current, in-force insurance contracts from one or more owners of the one or more current, in-force insurance contracts, wherein each of the one or more insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan, the remaining life expectancy of the insured or the remaining life expectancy of each of the insureds, when determined at least immediately after the acquisition, being such that (i) the total value of the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested, the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method.

2. A method according to claim 1, wherein the one or more current, in-force insurance contracts are life insurance contracts, and wherein each of the one or more life insurance contracts is characterized in that it provides a single death benefit on the life of an insured.

3. A method according to claim 2, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 20 years.

4. A method according to claim 3, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 15 years.

5. A method according to claim 1, wherein the remaining life expectancy of the insured or the remaining life expectancy of each of the insureds, when determined at any time after the acquisition but prior to the occurrence of death of the insured or of any one of the insureds, as applicable, being such that (i) the total value of the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested, the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method.

6. A method according to claim 5, wherein the one or more current, in-force insurance contracts are life insurance contracts, and wherein each of the one or more life insurance contracts is characterized in that it provides a single death benefit on the life of an insured.

7. A method according to claim 6, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 20 years.

8. A method according to claim 7, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 15 years.

9. A pension plan comprised of an investment portfolio, wherein the investment portfolio is comprised of an interest in one or more current, in-force insurance contracts from one or more owners of the one or more current, in-force insurance contracts, wherein each of the one or more insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan.

10. A pension plan according to claim 9, wherein the one or more current, in-force insurance contracts are life insurance contracts, and wherein each of the one or more life insurance contracts is characterized in that it provides a single death benefit on the life of an insured.

11. A pension plan according to claim 10, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 20 years.

12. A pension plan according to claim 11, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 15 years.

13. A pension plan according to claim 9, wherein the remaining life expectancy of the insured or the remaining life expectancy of each of the insureds, when determined at any time after the acquisition but prior to the occurrence of death of the insured or of any one of the insureds, as

applicable, being such that (i) the total value of the pension plan assets, inclusive of the interest so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension plan assets, exclusive of the interest so acquired and inclusive of the at least a portion of one or more assets of the pension plan invested, the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method.

14. A pension plan according to claim 13, wherein the one or more current, in-force insurance contracts are life insurance contracts, and wherein each of the one or more life insurance contracts is characterized in that it provides a single death benefit on the life of an insured.

15. A pension plan according to claim 14, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 20 years.

16. A pension plan according to claim 15, wherein the remaining life expectancy of the insured, or of at least one of the insureds, under the one or more life insurance contracts is no more than 15 years.

17. An investment product marketable to a manager of a pension plan having assets to invest, the investment product comprising a transferable interest in a pool of current, in-force insurance contracts, each of the insurance contracts having been obtained from one or more owners of the

one or more current, in-force insurance contracts, wherein each of the one or more insurance contracts is characterized in that it either (a) provides a plurality of periodic payments during the life of an insured or (b) provides a single death benefit on the life of an insured, but in either case, the insured is not a beneficiary of the pension plan.

18. An investment product according to claim 17, wherein the remaining life expectancy of each of the insureds under the current, in-force life insurance contracts, when determined at any time after the acquisition but prior to the occurrence of death of any one of the insureds, is such that, upon acquisition of the investment product by a pension plan which paid as consideration for the investment product at least a portion of one or more assets of the pension plan, (i) the total value of the pension plan assets, inclusive of the investment product so acquired, determined immediately after the acquisition, is appreciably greater than (ii) the total value of the pension plan assets, exclusive of the investment product so acquired and inclusive of the at least a portion of one or more assets of the pension plan paid as consideration for the investment product, the respective total values of (i) and (ii) being determined at the same point in time and in accordance with the same actuarially sound valuation method.

19. An investment product according to claim 18, wherein the current, in-force insurance contracts are life insurance contracts, and wherein each of the current, in-force life insurance contracts is characterized in that it provides a single death benefit on the life of an insured.

20. An investment product according to claim 19, wherein the remaining life expectancy of at

least one of the insureds under the current, in-force life insurance contracts is no more than 20 years.

21. An investment product according to claim 20, wherein the remaining life expectancy of at least one of the insureds under the current, in-force life insurance contracts is no more than 15 years.

Evidence Appendix

None.

Related Proceedings Appendix

None.